

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS,
MADELINE KRASNO, and RYAN
HARTHOPF,

Plaintiffs–Appellants,

v.

LAWRENCE A. TABAK, in his
official capacity as Acting Director of
the National Institutes of Health, and
XAVIER BECERRA, in his official
capacity as Secretary of the U.S.
Department of Health and Human
Services,

Defendants–Appellees.

Case No. 23-5110

JOINT MOTION TO GOVERN FUTURE PROCEEDINGS

Pursuant to this Court’s January 12, 2024 order, Doc. No. 2035549, the parties submit this joint motion to govern future proceedings. For the reasons that follow, the parties respectfully submit that this appeal is now ready for consideration on the merits and ask the Court to set the case for oral argument.

On May 11, 2023, Plaintiffs–Appellants (“Plaintiffs”) filed a notice of appeal, *People for the Ethical Treatment of Animals v. Tabak*, No. 21-CV-2380 (BAH) (D.D.C. Mar. 31, 2023) (*PETA*), Pls.’ Notice of Appeal, ECF No. 45, from the

district court's order granting summary judgment to Defendants–Appellees (“Defendants”), *PETA* Mem. Op. 30, ECF No. 44. Plaintiffs filed their opening brief on September 8, 2023. Doc. No. 2016050. Defendants filed their response brief on November 9, 2023. Doc. No. 2026268. In their response brief, Defendants stated that the Court lacked jurisdiction because the district court's March 31, 2023 order did not resolve all of Plaintiffs' claims against Defendant Becerra. *Id.* at 20–21. Defendants further stated that they would not object to Plaintiffs taking steps to cure the jurisdictional defect by dismissing their remaining claims against HHS with prejudice in the district court. *Id.* at 21. Plaintiffs then filed a consent motion for an indicative ruling asking the district court to dismiss the remaining claims against HHS with prejudice, which the district court granted on December 6, 2023. *PETA* Minute Order, Dec. 6, 2023.

On January 5, 2024, Plaintiffs filed their reply brief. Doc. No. 2034612.

On January 8, 2024, this Court granted Plaintiffs' consent motion to remand this case to enable the district court to enter a ruling on Plaintiffs' consent motion to dismiss the remaining claims against HHS with prejudice. Doc. No. 2034833 at 1. This Court further ordered that this case be held in abeyance pending further order of the Court. *Id.*

On January 11, 2024, the district court granted Plaintiffs' consent motion to dismiss the remaining claims against HHS with prejudice. *PETA* Minute Order,

January 11, 2024. The district court subsequently transmitted the record back to this Court. *See PETA*, ECF. No. 50.

On January 12, 2024, this Court ordered that this case be returned to the Court's active docket and further ordered that the parties file motions to govern future proceedings. Doc. No. 2035549.

The parties have conferred and together respectfully submit that the appeal is now ready for consideration on the merits because briefing has been completed and the parties have taken the necessary steps to resolve the jurisdictional issue. The parties further respectfully request that this Court set a date for oral argument.

January 26, 2024

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Certificate of Compliance

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 431 words, as calculated by the word-counting function.

This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Katherine Fallow

Katherine Fallow

Certificate of Service

I, Katherine Fallow, certify that on January 26, 2024, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Katherine Fallow

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